

§ 842.306

5 CFR Ch. I (1–1–04 Edition)

§ 842.306 Military service.

(a) Except as provided in paragraph (b), and unless otherwise provided under title III of the Federal Employees' Retirement System Act of 1986, an employee's or Member's military service is creditable if it was performed—

(1) Before January 1, 1957; or

(2) After December 31, 1956, subject to payment, before separation from service, of the deposit required by § 842.307.

(b) Credit for a period of military service is not allowed if the employee or Member is receiving military retired pay for such period awarded for reasons other than—

(1) Service-connected disability incurred in combat with an enemy of the United States;

(2) Service-connected disability caused by an instrumentality of war and incurred in the line of duty during a period of war (within the meaning of chapter 11 of title 38, United States Code); or

(3) Retirement under chapter 67 of title 10, United States Code.

(c) When adjudicating annuity claims, OPM will accept determinations made by the agency that authorized military retired pay concerning—

(1) The effective date of a waiver of military retired pay;

(2) Whether an individual's military retired pay was awarded for any of the reasons mentioned under paragraph (b) of this section; and

(3) Whether a period of military service forms the basis for military retired pay.

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, the computation of a survivor's annuity includes credit for any military service allowable under paragraph (a) of this section.

(2) If the separated employee (as defined in § 843.102 of this chapter) was awarded military retired pay, died after the date of separation from civilian service, and did not waive military retired pay effective before the date of death, military service upon which the military retired pay was based is not creditable.

(3) If the survivor of a deceased employee who had been awarded military retired pay files, in a form prescribed by OPM, an election not to have a pe-

riod of military service included in the computation of survivor benefits, that period of military service is not included in the computation of survivor benefits.

§ 842.307 Deposits for military service.

(a) *Eligibility to make a deposit.* (1) An employee or Member subject to FERS may make a deposit for any distinct period of military service by filing an application in a form prescribed by OPM.

(2) An application to make a deposit is filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

(3) An employee's or Member's deposit for military service must be completed before separation from service. If a deceased employee or Member was, at the time of death, eligible to make a deposit, the employee's or Member's survivor may make the deposit in one lump sum to the former employing agency, the Secretary of the Senate or the Clerk of the House of Representatives, before OPM completes adjudication of the survivor annuity application. A person who was eligible to make a deposit for military service but failed to complete the deposit within the time limits provided in this paragraph, may complete the deposit in a lump sum within the time limit set by OPM when it rules that an administrative error has been made.

(b) *Amount of deposit.* (1) The amount of a deposit for military service equals 3 percent of the basic pay for the service under 37 U.S.C. 207, or an estimate of the basic pay (see paragraph (c)(1)(iii) of this section), plus interest, unless interest is not required under paragraph (b)(4) of this section.

(2) Interest is charged at a rate as determined by the Secretary of the Treasury for each calendar year that equals the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under 5 U.S.C. 8348(c), (d), and (e).